MINUTES
STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

October 22, 2001 – Special Council Meeting
Rowe Six Conference Center, Building 1
4224 6th Avenue SE
Lacey, Washington

ITEM 1: CALL TO ORDER

Acting Chair Charles Carelli called the meeting to order at 1:40 p.m. A quorum was present.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development	Heather Ballash
Department of Ecology	Charles Carelli
Department of Fish & Wildlife	Jenene Fenton
Department of Natural Resources	Tony Ifie
Utilities and Transportation Commission	Dick Byers
Chair	Jim Luce

EFSEC Staff And Counsel

Allen Fiksdal	Irina Makarow
Mike Mills	Mariah Laamb
Michelle Elling	Robert Fallis, AAG, EFSEC

Guests

Grant Bailey, Jones & Stokes	Mike Torpey, BP Cherry Point
Mike Sotak, Duke Energy	Laura Schinnell, Energy Northwest
John Arbuckle, Energy Northwest	Chuck Lean, Wallula Generation
Brian Carpenter, Rebound	Ron Lavigne, CFE-AGO
Tom McKinney, BPA	Mike Dunning, CFE
Doug Kilpatrick, WUTC	Chuck Maduell, Williams, Kastner & Gibbs
Diane Schwickerath, Grays Harbor Audubon Society	

ITEM 3: ADOPTION OF THE PROPOSED AGENDA

The Agenda was accepted as presented, noting that Item 8 will be presented as an informational item only.

ITEM 4: APPROVAL OF THE AUGUST 13TH REGULAR COUNCIL MEETING MINUTES AND AUGUST 20TH SPECIAL COUNCIL MEETING MINUTES.

Jenene Fenton made the following motion.
Motion: To approve the minutes for the August 13, 2001 Regular Meeting and the August 20 Special Meeting as submitted.
Heather Ballash seconded the motion.
Action: The motion passed unanimously.

ITEM 5: SATSOP COMBUSTION TURBINE PROJECT

Prevention of Significant Deterioration (PSD) Air Permit – Reissuance	***Irina Makarow, EFSEC staff***

Irina Makarow: You have before you a copy of the marked up version of the preliminary approval of the final Satsop Prevention of Significant Deteriorations (PSD) air quality permit, as well as a Responsiveness Summary, drawn up for Council consideration today. I will just quickly walk you through what has happened on this permit. In April of 2001, Energy Northwest and Duke Energy Grays Harbor, which I'll refer to collectively as Duke Energy, submitted a request to EFSEC to issue a PSD permit for the Satsop CT Project. In 1996, when the project was initially approved by the Governor of Washington State, a PSD permit was issued at that time. It was extended for two consecutive eighteen month periods, and according to Federal and State law and guidelines no further extensions were permitted, so the proponent of the project, since they have not started construction, had to reapply from scratch for a new PSD permit.

The application was received and our Ecology permit writer reviewed it, obtained additional information as necessary, and prepared a draft PSD permit for the Council, which was issued for public comment on August 28th. At the end of the slightly more than 30-day comment period, the Council held a public hearing on the draft permit in Elma. The Council received one written comment and seven oral comments responding to the preliminary approval. An additional six oral comments were received in support of the approval and did not request any permit changes or did not ask any specific questions as to how the conclusions in this permit were made.

I will direct you to section three of the Responsiveness Summary. Staff looked at all of the comments that were received, and because a significant number overlapped, the responsiveness summary regroups and combines all of the separate comment areas so that the response is a little bit easier to follow. The first set of comments was received from Marie Piper on behalf of the Applicant, and these were editorial comments that led to changes in condition numbers 12, 14, and 20 of the permit. On page eight of the marked-up version that you have before you, Condition 12 was updated to read that the number of start-up and shutdowns shall be limited to 130 events for each of the power generating units (PGUs). Condition 12.1 added language that indicated that the start-up period would end when all six Drylow NOx (oxides of nitrogen) Burners per power generating unit (PGU) were operational, and this is consistent with the way the facility will be operated.

Condition 12.2 was edited to read: "four hours maximum for both turbines have elapsed since fuel was first combusted in the first turbine", which actually adds a little bit more specificity to the permit, as opposed to using a two hour average for use of the turbines. The next change was Condition 14, where the Satsop Generation Facility was changed to the name of the Certificate Holders, Duke Energy Grays Harbor and Energy Northwest, to make it clear who is the proponent of the project and the applicant for this air permit. And then finally, on page 10, Condition 20.4, was changed to reflect that the permittee will have to submit the results of any required monitor audits or accuracy checks to EFSEC and the U.S. Environmental Protection Agency (EPA) for review.

Other comments received by the Council did not specifically request changes in the permit language or conditions, but addressed areas that commenters hoped the Council had looked at.

The first, and one that we received a number of comments on, was the impact of, and the consideration given the Boise Cascade Marathon Facility, in developing the specific Satsop CT PSD permit. There were two facets to this response. First of all, the Satsop CT Project is what is called a PSD source, whereas the Boise Cascade Marathon Facility is not. Accordingly, the Satsop CT Project requires a PSD permit, whereas the Boise Cascade Marathon Facility only requires what is called a Notice of Construction, which is a state issued permit. Because of this difference, the two facilities are examined in a vastly different way.

Under the PSD program, a facility has to do a significant amount of modeling and analysis to show that the impacts are below levels that will impact the attainment status of an area, and this is not required of a non-PSD source. However, the Boise Cascade facility did receive some additional attention versus what is traditionally required of such a facility. The Boise Cascade facility was permitted by the Olympic Air Pollution Control Authority (OAPCA) and they were required to collect ambient background data and that analysis did include the proposed emissions from the Satsop facility. Therefore, OAPCA did see all of that data when they permitted the Boise Cascade facility. Based on their review, and given the conditions of the permit that was issued, OAPCA determined that the Boise Cascade facility would not have any significant adverse impact on the environment or on people living in that area.

Consistent with state and federal regulations for PSD review, the Satsop CT Project was required to model its emissions to determine whether or not impacts to ambient air quality concentrations would exceed significant impact levels, and that is a very specific term under the PSD regulations. Significant impact levels are thresholds that are established by EPA. Under PSD regulations, only facilities with impacts in excess of those levels (in the same area) have to be included in the emission impact analyses. Under those regulations, modeling for the Satsop CT Project did not have to include the emissions of the Boise Cascade facility.

Finally, in the analysis that was submitted to OAPCA for the Boise Cascade facility, it was made clear that the Boise Cascade facility and the Satsop CT Project would have two very different types of impacts in the area because of the configurations of the facilities and the stacks. The impacts of the Boise Cascade facility were much more localized, but the impacts of the Satsop CT Project, because of the very high stacks, occur at a much further distance. I think it's just a good reminder that when our permit writers look at these applications they make sure that all of

the data that has been provided is valid, and that all of the thresholds and the comparisons to the thresholds are correct. The draft PSD permit would not be issued for public comment if there were any question that the Satsop Combustion Turbine Facility would not meet emission standards and have any adverse impact on the environment or the health of residents in that area.

The second issue of concern was the understanding of what significant emission rate thresholds are; and how any significant air quality impacts are assessed in the PSD permitting process. This is addressed in Section 3.5. This is a rather difficult concept for people who are not well versed in the PSD permitting process to understand as to how a facility that can emit more than 100 tons per year of any criteria pollutant, and this again is a term from PSD law and regulation, as a significant emission rate, how it cannot have a significant impact on the people living in the vicinity of the facility. Section 3.5 explains that when the term significant emission rate threshold is used, it means that it is exactly that, it is a threshold. Once it is determined that a facility does emit above the significant emission rate threshold, that is when it is concluded that the facility must undergo the very detailed PSD review. It is through this review that it is determined whether the facility has any significant impacts.

The Satsop CT Project and the PSD Application did undergo the very detailed review and towards the end of Section 3.5 there is a listing of all of the things that the applicant had to prove and be verified by our permit writer. For example, they had to do computer-based dispersion modeling, to simulate the dispersion of criteria and toxic air pollutants. They had to assess compliance with the ambient air quality standards to determine whether the facility would have any impact on ambient air quality, both in the vicinity and far away from the plant; whether there would be any impact to soils and vegetation; whether there would be an exceedance of PSD increments in Class I and Class II areas; and whether visibility impacts would occur in national parks. All of these things were analyzed and were verified by the permit writer, and were shown that they would not occur. So, in summary, although the Satsop CT Project is a significant source that does have to go through the PSD permitting process, the permit writer concluded that the impacts are not significant.

A number of commenters requested information about water vapor emissions and droplet deposition, and Section 3.6 addresses this. We have described when the most water is going to be emitted; how much water that is going to be; and what the sources are. Because there is moisture in the natural gas, there is moisture that is going to be emitted from the aqueous ammonia that is used to control NOx, and then there are water vapor and water droplets that are emitted through the cooling towers. Again, this is water, it is not a toxic pollutant, and it is not considered to be an issue when examining impacts to the environment. The cooling tower drift was analyzed in the original application and shown not to have any significant adverse impacts.

Section 3.7 addresses questions the Council received on impacts to visibility of Class II areas. Again, Class II areas are designated as populated areas and they have a set of primary standards that apply to them to protect human health and safety. Secondary standards apply to sensitive areas, which are the Class I areas, which are typically national parks and other areas that require protection by federal law and regulation.

The applicant did provide modeling of visibility impacts to Class I areas in their application. And as it turns out, the modeling that they provided also covered Class II areas. The modeling showed that the impacts to visibility in Class I areas, which is actually the only impact that has to be looked at by federal and state regulation, were acceptable.

There were some questions regarding compliance monitoring. In our Responsive Summary, we clarified that it is the applicant that has to monitor the emissions from the facility at the stack, and that both EFSEC and EPA have jurisdiction to enforce compliance. It was also noted that it is EFSEC and EPA's responsibility to look at monitoring results on a monthly basis to ensure compliance. Some of the pollutants are only monitored on an annual basis, and this annual monitoring frequency is consistent with both federal and state regulations, and this is what all other permits require. This permit is no more lenient than any other permit that would be issued in Washington State.

The draft permit does not require the installation and operation of an ambient air quality monitor because this is not part of PSD regulation or state regulation. The Olympic Air Pollution Control Authority does monitor surrounding air quality and the nearest OAPCA air quality monitoring station is located in Lacey. I was also made aware that there are some other ambient air quality monitors in Grays Harbor County, but those were installed to monitor emissions from specific projects that already existed in the county.

One commenter requested that the Council consider mitigation for the emissions by requiring decreased electrical rates for the people that live in the vicinity. In 1996, as part of its review of the original application, the Council did look at all the socio-economic impacts and the sale of electricity from this facility and did impose conditions and those conditions cannot change. The PSD permit is not a venue that allows mitigation of electrical rates, it is only a permit that looks at the impact and control of air emissions.

In Section 3.10, there is a response regarding deposition of nitrogen and ammonia and impacts on salmon in the Chehalis River. Again, the application did address the deposition of particulate emissions and ammonium sulfate and ammonium nitrate and not only in Class I areas, which are the very sensitive ones, but also in Class II areas, and all of the data that was presented showed that there would be no impact. Regarding the protection of ground water and water resources from ammonia spills, the applicant is required to install and maintain the aqueous ammonia tank in a manner that is consistent to prevent such spills. That tank will be installed with a dike surrounding it to contain any spill.

There was a question regarding the coordination of PSD permitting and permitting of similar sources by federal, state and local agencies. In a snapshot, when the Council or Ecology receives an application for a PSD permit, the permit writer coordinates review of that application, not only with state agency reviewers, but also with federal reviewers and EPA. Those reviewers all have an opportunity to provide input as to whether they believe the application is sufficient. They can also have input as to the conditions that appear in the final permit, or in the draft permit that is put out for comment, and the draft permit does reflect all of their concerns.

The impact of air emissions during stagnant winter or meteorological conditions was brought up, and is addressed in Section 3.13. The ambient air impact modeling did use meteorological data at the site for one year, so they did look at all of the conditions that occurred during that year, and there were no impacts that were predicted. Had there been any impacts shown from the modeling due to stagnant winter conditions, the facility would have to mitigate those impacts to be permitted.

And finally, the Satsop CT Project did have to provide analysis that looked at plume and dispersion modeling, and this modeling was available to the public throughout the public comment period.

And the very final permit change is on the signature page where we have replaced Charles J. Carelli, Acting EFSEC Chair, with James Oliver Luce, EFSEC Chair. And I welcome your questions.

Acting Chair Carelli: Thank you for that very complete description of the Responsiveness Summary. Do we have any questions from the Council?

Jenene Fenton: I have a question about the start up and shut down, and I think I understand that when Duke proposed it, they assumed 130 per PGU, and that it was just an oversight in the original draft.

Irina Makarow: That is in Condition 12 and the draft permit read, "130 events for both PGU units", however, there are situations where they could operate only one of the units or the two units could be started at different times. So, the modification here is to indicate that it is 130 events for each one of the combustion turbines. In essence it comes out to the same number, because of being 130 for both, it's now 130 for each one separately.

Jenene Fenton: That's what I don't understand. How can it be the same number, when it appears that you're adding 130 more occurrences?

Irina Makarow: No, the 130 for both assumed that they would both be operating at the same time and would both start up and shut down at the same time. The condition now separates each unit out, so that both would have the possibility of starting and shutting down 130 times each year, but not necessarily together. The emission rates that were calculated and used in the permit reflect 130 for each.

Acting Chair Carelli: Any other questions?

Dick Byers: I have one. At line item 241, Condition 14, we see the term "initial start-up". At line 325, Condition 26, there is a notification requirement, stating that Duke Energy is to notify EFSEC in writing at least 30 days prior to startup of the project. In order to clarify what this condition is requiring, if I understand the condition correctly, a notification would have to take place before initial startup of the project. Is that correct?

Irina Makarow: Yes, that is correct and we can make that change to clarify Condition 26 that it is initial start-up of the project.

Dick Byers: Particularly since we have other conditions that have to do with startup and shutdown, it seems to me that it would be a useful clarification.

Acting Chair Carelli: Allen, the intent today is to have the Council act on the proposed permit?

Allen Fiksdal: Yes, staff recommends that you approve the PSD permit and the Responsiveness Summary.

Tony Ifie: I make the following motion:
Motion: To approve the Satsop Combustion Turbine Project Notice of Construction and Prevention of Significant Deterioration permit, known as the PSD permit and the Responsiveness Summary.
Dick Byers: Second the motion.

Acting Chair Carelli: It's been moved and seconded. Do we have any other discussion or comments concerning the permit?

Robert Fallis: Just so the record is clear, I assume that it's with the clarification that Mr. Byers offered.

Acting Chair Carelli: Mr. Ifie and Mr. Byers agreed to the clarification. Hearing no other comments, we'll move to a vote.

Action: Motion passed unanimously.

Acting Chair Carelli: Is there anything else to come before the Council concerning the Satsop Project?

Irina Makarow: I would just like to follow-up with what staff will be doing now that the permit is approved. We will produce a final version of the permit for signature by Acting Chair Carelli, our permit writer over at Ecology, and EPA. Once they have all signed, we will get a copy of the permit to the permittee, and we will issue the Responsiveness Summary and send a copy to all of those people that provided comments to the Council.

Acting Chair Carelli: At this point would you like the microphone?

Jim Luce: You're doing great.

ITEM 6: ENERGY NORTHWEST COLUMBIA GENERATING STATION & WNP-1/4

Status Report	*John Arbuckle, Energy Northwest*

John Arbuckle: Good afternoon. You should have a one-page briefing handout, and there is also a copy of the proposed Bechtel lease agreement, which will be covered in the next item.

The Columbia Generating Station (Columbia) is online at 100% power and we are still in a heightened level of security. I can't go into detail on that, but I will be working with Mike to get a time for Mr. Luce or any member of the Council to come over to tour the facility to see what we're doing in that area. We're taking significant steps to increase security at the plant.

We also had a successful Emergency Response Organization training drill on September 18th and we also demonstrated a Notification Evacuation of WNP-1/4 for Energy Northwest and lessee personnel. The drill served to validate some of the corrective actions that we have taken to address the Council's concern that lessee personnel needed training to know what they're supposed to do in the event of an emergency at Columbia. We identified some weaknesses in that area and the training drill was part of the corrective actions.

The NRC also looked at it this, as part of an inspection of the Columbia Emergency Plan, and has issued a preliminary finding citing the inability to notify the public working at the 1 and 4 site as an apparent violation of NRC requirements. A copy of the NRC inspection report has been provided to Acting Chair Carelli. We are in the process of responding to their findings right now, but I would note that we've implemented a number of corrective actions and made changes in our emergency procedures. The actions taken are to designed to make sure lessee people are aware of what their responsibilities in the event of an emergency. The drill demonstrated the proper response and we now have a requirements for both the initial training and annual refresher training to be conducted by our emergency preparedness organization.

Acting Chair Carelli: Do we have any questions concerning the Columbia Generating Station? I have one. Could you give us a very brief description of the extent of the training that these folks get? Is it one hour, four hours, ten hours?

John Arbuckle: I have not done the training, but I understand that it's about an hour and a half to two hours of initial training. The training includes what to do if you hear the sirens; what do you do if you hear a site page or something like that; and then what your expectations are. I've seen the training handouts and things, but I don't know the exact time frame, but I can get that to you.

Mike Mills: That is also something we could cover when we come over for our visit.

John Arbuckle: That's a good suggestion. I'll put that as an agenda item.

Bechtel Lease –1 and 4 Buildings & Layout Area	*Mike Mills, EFSEC Staff*

Mike Mills: In your packets there's a September 18, 2001 letter from Energy Northwest requesting authorization for alternative reuse of Nuclear Project 1 and 4 facilities. This request

involves a proposed lease with Bechtel National Incorporated for a portion of the WNP-4 site. The proposed activity consists of the sublease of a complex of buildings (nos. 87, 206, and 356) and approximately 20-acres for an adjacent outside lay down area.

John Arbuckle: I handed out a draft of the lease agreement that shows the three articles, numbers 28, 29 & 30, dealing with hazardous substances, environmental protection and the site emergency plan, and verify that they are consistent with previous Council guidance in these areas. I also attached a map to show exactly where the buildings and lay down area are located on the WNP-4 site.

Mike Mills: It would be staff's recommendation that the Council approve the proposed lease.

Dick Byers: Mike when you introduced this issue, you referred to WNP-1 and 4. What we're looking at here is only a lease that has to do with No. 4, is that correct?

John Arbuckle: That's correct. It's on WNP-4, although the site certification agreement covers both WNP-1/4, but that's correct. It's at WNP-4.

Acting Chair Carelli: Is this area completely fenced off?

John Arbuckle: Bechtel is going to have some fencing around the bottom part of the railroad, actually where the arrow comes in, they will add fencing around that. The fencing right now is at the bottom line, but where it notes containment inside the bubble, that's where the actual fence is and they're going to build a fence around that area.

Acting Chair Carelli: So they'll basically build a fence around the bubble there?

John Arbuckle: That's correct.

Acting Chair Carelli: Any other questions from Council?

Tony Ifie: I make the following motion:
Motion: To approve the lease agreement with Bechtel National Incorporated for Energy Northwest to lease a portion of the WNP-4 site. The lease includes buildings 87, 206 and 356 for warehouse space and a 20-acre lay down area.
Dick Byers: Second the motion.

Action: The motion was passed unanimously.

Acting Chair Carelli: Anything else on the Columbia Generating Station, Mike?

Mike Mills: No, as John indicated, we are working to try to get the chair over to tour the Energy Northwest facilities and we would open that invitation to other Council members as we make those arrangements.

Jim Luce: I would just add that Energy Northwest CEO Vic Parrish has been very helpful in providing information to the Council in terms of the security measures that are being taken at Columbia and the other facilities. We've have a good exchange of views on that and I have a high level of confidence that Energy Northwest is doing exactly what needs to be done in the security area. Of course, they're constrained by federal authority with respect to their ability to brief the Council on all the details, but they will provide as much information as they can when we get over there.

ITEM 7: BP CHERRY POINT PROJECT

Shapiro Contract Amendment	***Michelle Elling, EFSEC Staff***

Ms. Elling: On September 27th, the day before the Potential Site Study became final, BP's Mike Torpey requested a meeting with EFSEC staff to discuss a potential next phase of work prior to the submittal of an application. Mike, would you like to say a few words about this request.

Mike Torpey: I think the process went well. The Potential Site Study did what it was supposed to do. The process worked and we actually modified our project based on input that we received back from agencies and the public. We're anxious now to go to that next step, to start preparing an application and having that application reviewed for completeness prior to formally submitting it to the Council. Essentially knowing that this is the process that will have to occur anyway, if we can do it now, I think it will be more efficient if we have the application reviewed before submitting it. So that is our desire, to get that started as soon as possible.

Michelle Elling: You'll see in the October 9, 2001 letter that was submitted by BP, they are requesting that the Council formally begin Phase II of the Potential Site Study. It is staff's recommendation that the Council approve a contract amendment for Shapiro to proceed with work associated with Phase II of the BP Cherry Point Cogeneration Project Potential Site Study. That work will involve reviewing the draft Application for Site Certification that BP will be developing.

Acting Chair Carelli: Does anybody on the Council have a question of Michelle at this time?

Dick Byers: This is actually one of my clarification questions. The letter from BP mentions an expected cost of approximately $155,000, while the contract increase is recommended to be $135,000.

Michelle Elling: What we asked Mr. Torpey to acknowledge in his letter to us was the funding not only for our independent consultant, but also for EFSEC administration staff, and that's the difference.

Acting Chair Carelli: It may be appropriate to do the application review on a page by page basis, or a section by section basis during this phase. Will the Council also be doing a formal review of the Application for Site Certification once it is submitted?

Michelle Elling: You actually won't receive this draft, only our independent consultant and staff will receive the draft.

Allen Fiksdal: I think what the Chair is asking is, "will the consultant go through the application again once it's whole and complete?" The answer is yes. The reason that they will need to review the formal application is because they probably will not see it in its entirety until that time. We will be asking our consultant at that time to review the full application to ensure that all the sections are consistent with each other and they will be able to verify whether their recommendations or suggested changes have been addressed.

Jim Luce: I have just a general process question. Are these contract amendments generally something that the full Council has to act on?

Allen Fiksdal: It has been the practice of the Council to do that, whether they need to do it or not is a question that we may want to explore.

Jim Luce: I would like to explore it because it seems to me like it's an administrative action that's going to be taken and it would not be something that would generally require the policy advice of the Council members, so, it might be a way to shorten the agenda somewhat and expedite the process somewhat.

Rusty Fallis: Under the Council statute, the chair is authorized to execute contracts, which would include amendments. So I think of it as a technical matter the Chair has the authority to do on his own.

Allen Fiksdal: Staff could prepare a recommendation, or perhaps a briefing paper, for the Chair to review very soon.

Jim Luce: That would be great, and please circulate that to the other Council members. Unless there's a real objection, I think we can dispense with having to hear these matters at Council meetings.

Heather Ballash: I make the following motion:
Motion: To approve Contract Amendment 3 for Shapiro & Associates to proceed with Phase II of the BP Cherry Point Project Potential Site Study, which is a review of the draft application for site certification that BP will be developing.
Tony Ifie: Second the motion.

Action: The motion passed unanimously.

ITEM 8: WALLULA POWER PROJECT

Land Use Plans Waiver	***Irina Makarow, EFSEC Staff***

Ms. Makarow: In the Application for Site Certification that was submitted in August of this year, Wallula Generation requested that the Council waive the requirements of Washington

Administrative Code (WAC) Chapter 463.42.362 (1)(a). which requires the submittal of adopted land use plans and zoning ordinances for the area within a twenty-five mile radius of the immediate site area. The applicant did submit land use plans and zoning ordinances for Walla Walla County where the proposed facility is located. The applicant informed staff that through 2000 and 2001, Walla Walla County was in the process of reviewing its Comprehensive Plan, with the final revised Comprehensive Plan being adopted by the county in May 2001. At the time of Wallula Generations's application submittal, the county had not yet produced an official version of its May 2001 Revised Comprehensive Plan, and the applicant indicated that they would obtain this plan as soon as it was available and pass it on to the Council and our independent consultant.

EFSEC staff requested our independent consultant, Jones & Stokes, to advise the Council whether additional plans within the twenty-five mile radius would be needed for Jones & Stokes to proceed with its review of the application and preparation of the EIS, and in your package you should have their response to EFSEC staff dated October 15th, and just behind it is the Wallula Generation request. Jones & Stokes concluded that they would not need more than the Walla Walla County plans. The twenty-five mile radius requirement in the rules, was primarily aimed at ensuring that emergency response would be properly addressed at the nuclear facilities being sited by the Council in the 1970's. For the Wallula Power Project, Jones & Stokes has concluded that only the Walla Walla County plans will be needed to meet their review needs. Staff therefore recommends that the Council take action today to grant Wallula Generation's request for the waiver to the requirement to have to submit all land use plans within twenty-five miles of the proposed Wallula Power Project site.

Acting Chair Carelli: Thank you Irina. Do we have any questions from Council members? Again, I do have one. That is, should the Council approve this today, are we approving this just for Wallula or does this have implications for the other projects that are currently in the queue, like Starbuck, Mercer Ranch, or BP?

Irina Makarow: This approval would be specific to the request made by the Wallula Generation, so it would only apply to the Wallula Power Project.

Rusty Fallis: As a practical matter, it probably has implications for the others; because I think you have to have a rational reason to distinguish one from the other. So you may be setting a precedent depending upon the facts of the other applications.

Jim Luce: But that is precisely correct, any subsequent action would be dependent upon the facts related to any of the other project applications.

Allen Fiksdal: I might add that Council rules allow for an applicant to ask for waivers, but it is only Wallula Generation, of the two applications that are before you currently, that has asked for a waiver.

Acting Chair Carelli: Is it our expectation that if somebody else asked for a waiver, we would consider it, but it wouldn't be granted automatically?

Allen Fiksdal: I think that each applicant would have to specifically ask for a waiver if they want to have that requirement waived. You may be setting a precedent here; but an applicant would have to specifically address the waiver in their application or make a special request.

Jim Luce: Our consultant would presumably look at each application and advise us with respect to whether that is a prudent decision to make.

Dick Byers: I have a clarifying question. I want to make sure I understand this correctly. The principal reason why the request has been made for the waiver is because certain land use plans inside the twenty-five mile radius, at this point in time, simply do not exist?

Allen Fiksdal: No, I think it's more that the other plans within the twenty-five radius are simply not relevant to this project. The twenty-five mile radius would bring in plans for the cities of Pasco, Richland, and Kennewick; Benton County; Franklin County; plus Walla Walla County. The plans for these jurisdictions would probably fill three or four boxes, and because our rules don't specify what part of the plans would apply, the applicant would have to submit all of the plans. The impact area for the Wallula project is Walla Walla County. I think our consultant and staff feels that there's no reason that we need to have those plans, they don't provide any added value.

Tony Ifie: I make the following motion:
Motion: To approve Wallula Generation's request for the waiver to the requirement to have to submit all land use plans within twenty-five miles of the proposed Wallula Power Project site.
Jenene Fenton: Second the motion.

Acting Chair Carelli: It's been moved and seconded. Any further discussion or questions? Mr. Byers?

Dick Byers: In the interest of identifying the kind of distinguishing characteristics that our counsel just mentioned, it seems to me that it would be useful to have on the record in this discussion, the observation that the reason the waiver is being requested in this instance, is because the principal land use plan that would be affected by the Wallula project, is sufficient to understand land use impacts and that the additional land use plans that are within the twenty-five mile radius are not adding any substantive valuable information.

Acting Chair Carelli: That was a good clarification. It was very articulate. Thank you. Any other comments?

Action: The motion passed unanimously.

ITEM 9: WALLULA & STARBUCK PROJECTS

Adjudicative Schedule	***Allen Fiksdal, EFSEC Manager***

Allen Fiksdal: The Council has received requests from both the Wallula and Starbuck project sponsors to look at the schedule for adjudicative proceedings and you have been discussing it

during recent Executive Committee meetings. I have prepared a draft application review briefing paper that I passed out earlier today. I suggest that you take some time to look at that. I don't believe that you need to take action on this right away. There have been several suggestions that came out at the Executive Committee and I believe it needs a little more work; therefore I would recommend that you defer action on this until a later date.

Jim Luce: It's tabled primarily for Council members to look at and think about between now and maybe the next meeting. The whole question is, what is the appropriate time for intervening to raise issues, and the balance of course, is having an opportunity to raise those issues and protect the public's right to raise issues, while still being able to move applications through the process in a timely manner. At the last Executive Committee meeting, there were three variations on a common theme that were raised. Those variations or options are discussed in the briefing paper.

The original Starbuck proposal was dealt with at the bottom of page two, where EFSEC would start intervention prior to, or shortly after issuance of the draft environmental impact statement (DEIS); where parties would be able to identify their issues, and issues not raised would be excluded from the adjudication. There is an important exception to that, and that is if there is a new issue that comes to peoples attention, then obviously the Washington Administrative Code provision for Intervention for Good Cause after a point in time would apply, so it's not a hard and fast rule. In that regard, I would view this as a pilot project, with the Council being able to determine if it works or not.

There has been a suggestion made, an alternative proposal by the Counsel For the Environment (CFE), that intervention should be allowed up to sixty days after issuance of the DEIS, and that's just for petitioning for intervention, or notice pleading if you will. Then you would have another sixty days to raise issues, so that would add another two months, for a total of 120 days.

Department of Fish and Wildlife counsel Bill Frymire also suggested a process during the recent brainstorming session that some people thought was pretty logical, and we identify it here by his name, not the particular agency that Bill represents. Mr. Frymire's proposal assumed a Potential Site Study had been done, and would key the call for intervention to the determination that an application was complete. At that point in time you would give notice to all parties, including those persons or organizations who had participated in the preliminary study and the scoping meetings. Then there would be thirty days for intervention and you would raise your issues during that point in time. The theory being that the issues would be pretty clear by the time both the site study and application were complete. If there were new issues raised, then that's fine, we'll be reasonable in terms of allowing late intervention, under the rule of Blue Sky and consistent with the WAC.

Allen did a good job in capturing the various positions or options that have been offered, and we're proposing that this matter be tabled for now to give members a chance to review the proposals in more detail. It's tabled to take away and look at and then we will bring it to some sort of conclusion at the next Council meeting.

One of the questions that was presented, and is addressed in Allen's paper, is why change? I think the discussion is summarized at the top of page 2, with the first argument for not changing, being that the public interest is not satisfied with early intervention because the DEIS offers the best vehicle for the public to assess a project. The response to that is when you have completed a preliminary site study most of the issues have been looked at and would be addressed in the application. You could rebut that approach by saying it is still at the preliminary stages and something else could surface through the DEIS process that would help reviewers identify or determine what kinds of mitigation might be necessary. The surrebuttal to that is if an intervener finds the mitigation identified in the DEIS is adequate, then the issue(s) could be dropped from intervention.

So, again, the balance is how do we protect the public interest to intervene and participate in these proceedings, and at the same time move the proceedings along in a timely way. This is being viewed as a pilot project; this is not anything more than that. You're right, somebody else will probably raise the issue that we are setting a policy, so how do you balance the two things and get down the road in a reasonable fashion. Allen has done a really nice job putting this draft together. I think it fairly captures the positions the different parties have talked about at the Executive Committee meeting and now it's out in the public. I assume we'll hear from the public between now and when it's set for Council action at the next meeting.

Allen Fiksdal: I suspect that you'll have an Executive Committee meeting prior to the next Council meeting to discuss this.

Jim Luce: Yes, nice job Allen.

Chuck Lean: Mr. Chair, am I to understand that this issue will be decided at the next regular meeting?

Jim Luce: That's the current intent.

Chuck Lean: I would like to clarify it for the record that we like Mr. Frymire's proposal and we think that the Wallula Project [application] now has been more or less deemed complete, I mean adequate to proceed to hearing on, so if we're following the Frymire proposal, it should be approved for public notice for intervention right away, but we'll wait. I guess we have no choice but to wait until the next meeting. Second, there was one other item that concerns us, that may require some sort of written response. Mr. Carelli was concerned about non-organizational people who might be contemplating filing for late intervention for one or a number or reasons. I would like to point out that Council rules and law provide an opportunity for individuals to show up at the public witness hearing and give their testimony and have it be considered by the Council, even though they are not parties, so the kind of ma and pa interveners, if you will, are taken care of in that way. We remain concerned and want to move this project along as fast as we can.

Jim Luce: The process proposed by Mr. Frymire assumes that a preliminary site survey has been done and by that point in time the thinking is that the issues ought to be pretty well identified.

Chuck Lean: That's the proposal we support,with the call for intervention being triggered to the consultant's determination that the application is complete and ready to go to hearing, and we would like to see it done that way.

Acting Chair Carelli: And of course you would agree that if there was an issue that came up that was unexpected, it would be reasonable to have a late intervention.

Chuck Lean: I think that would be with good cause shown. I would like to see the issue, but normally good cause could cover a number of things like that. One thing you try to do through all of this for both sides is to be fair and make procedural due process, and so if something comes up that nobody's had a chance to say anything about, well, naturally you would handle those considerations.

Mike Dunning: Mr. Chair, I have a couple of questions.

Acting Chair Carelli: Could you identify yourself for the Council, please?

Mike Dunning: Mike Dunning, Counsel for the Environment. One clarification question – at the Council's next regular meeting, is the decision going to be just with regard to the timing of intervention or is it going to include the second or third or both of the other proposals presented by Ms. Thomas on behalf of Starbuck that I believe Wallula supports? In other words, the proposal about issues not raised through the DEIS process cannot be considered due to the adjudicative process and the ex parte rules with staff, or is it just intervention?

Acting Chair Carelli: I would like to ask Allen, unless Jim, you've got comments on this, my thought is that it pertains just to the intervention.

Jim Luce: I haven't viewed this as dealing with ex parte issues as such, in fact, being quite honest, I would have to go back and review Liz's proposal and look at the ex parte issue.

Rusty Fallis: Objections could potentially arise where staff was participating in a discussion of an issue in anticipation of making a recommendation to the Council. The concept of staff assisting in the resolution of issues could raise concerns, the other stuff does not raise ex parte issues.

Jim Luce: And the legislature, certainly to some extent, addressed that issue in the recent statutory changes by opening the door for Council staff to make recommendations to the full Council.

Chuck Lean: That may have complicated the issue.

Jim Luce: Well, let's put it this way, they dealt with the issue. From my perspective, the staff briefing paper addresses the question of what's the appropriate time for intervening to raise issues. The appropriate time, going back to the Frymire proposal, is when the preliminary site study has been completed and the application is deemed complete. It's not notice pleading, that

is, we're here and we're in. It's we're here and we're in and here's the issues that we're going to raise. So after that point in time, you would have to show good cause why you hadn't been able to raise those issues earlier. Otherwise, there would be a preclusion.

Mike Dunning: Yes, I completely understand Mr. Frymire's proposal and the intervention issues, but I guess my question is still what the Council intends to do at its next meeting. Are you just deciding on the intervention issue, or if that discussion and decision is going to include the proposal with regard to identification of issues on the EIS side and only through that mechanism, and then they won't be able to be addressed in adjudication.

Jim Luce: I think the answer is yes.

Mike Dunning: If the answer to that question is yes, there is nothing in the staff briefing paper that contains the Counsel for the Environment's position with regard to public comments. Mr. Lavigne gave our position at the last meeting.

Jim Luce: Could you please restate your position.

Mike Dunning: The position is basically that the state/federal environmental impact statement process and the adjudicative proceeding are two separate proceedings, and parties shouldn't have to identify all of the issues through the DEIS process or risk being precluded from raising those issues during the adjudicative phase. Those are two different separate proceedings and from my knowledge, EFSEC has not combined the two in that fashion before. That's the position of the Counsel for the Environment and we would ask that the recommended approach not be adopted by the Council.

Jim Luce: I think that issue may very well be before the Council, so maybe some clarification is necessary. From my perspective, the issues that are going to be addressed in the adjudicatory phase should be capable of being identified fully by the time the preliminary site study and the application are complete. If in the course of preparing the DEIS, some new issue that was not expected were to emerge, say water-related issues, then the Counsel for the Environment or anybody else would be free to request to raise that issue at that point in time.

Mike Dunning: I understand, but I want the full Council to understand that the Counsel for the Environment's position disagrees with that and is not reflected in this briefing paper. Again, it is Counsel of the Environment's position that the two proceeding are fundamentally separate and that not raising an issue through the Environmental Impact Statement (EIS) process should not preclude someone from raising that issue in front of the Council in the adjudicative process. I just wanted to make that clear.

Jim Luce: I understand your position. Maybe we can send a slightly modified version of the draft paper around.

Allen Fiksdal: I can add that issue to the briefing paper, but we also didn't address the staff's role in making a recommendation to the Council. Would you like that added into the paper?

Jim Luce: No, I think staff's role is a separate issue that we all need a bit of time to think about. We've got some recent legislation that we need to make sure we fully understand. I think if we deal with what we've got before us, that's pretty good.

Rusty Fallis: I believe that we asked Liz Thomas to think about how to refine her proposal. That is to say, under what circumstances she would foresee staff participation being useful, and I don't think we've heard from her yet on that.

Michelle Elling: Just as a point of clarification, I think what Mr. Dunning is talking about is the original letter we received from Starbuck and there were many issues outlined in that document.

Jim Luce: Thank you.

Chuck Lean: Mr. Chairman, could I speak one more time just briefly?

Acting Chair Carelli: Sure. Why don't you come up?

Charles Lean: I'm Charles Lean, an attorney representing Wallula Generation. There were a number of things in Liz Thomas's letter that we generally supported when it first came in. I'm not sure that we still support the parts of it that are trying to mix the issues with the EIS process, either at the draft or final stages. The cleanest and simplest part, and the part of Mr. Frymire's proposal that intrigued us was that we have a definite cut-off once the application is ready to go to hearing. Then the Council can put out a notice inviting intervention, or advising people that intervention must be requested by a set date, usually about 30 days after the date of the notice. At that time, the intervention documents may raise some issues, but we can then go immediately to a pre-hearing conference, probably within a week or 10 days. Those issues would be written out and covered by the pre-hearing order. All of that would be done independent of the EIS process, and just be part of the adjudicatory process.

The issues for the adjudicatory hearing would be identified as soon as we could through the pre-hearing conferences. If they weren't identified by the cut off set in the pre-hearing conferences, then I assume there would have to be good cause for adding new issues. Our thought was that the notice could go out, people could come in at a pre-hearing conference to present their issues, the issues would be covered in an order, and it would be over. That would be independent of the EIS process. I think Liz Thomas had some good thoughts there, but I don't see a need to tangle up the EIS process.

Jim Luce: There's no reason we have to do that. We can consider them separately.

Chuck Lean: We're very interested in moving this along. That seems to be the time sequence we find ourselves in. That's the best way to proceed and the cleanest. I also might add if you're going to spend another month thinking about this, we would ask that you invite your local members to sit in on the decision on how you are going to proceed.

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Jim Luce: That's a good suggestion. Thank you. So the Counsel for the Environment has heard the approach that Wallula prefers be taken. How are you with that?

Mike Dunning: We are not opposed to that, and I think the normal procedure would be that through the adjudication, issues would be identified through a pre-hearing meeting and set out in the order issued by the Council after that. Our concern with Ms. Thomas's proposal, and Mr. Lean raised the same concern, is that the two processes – adjudication and EIS – not be tangled. And because they are separate, issues raised during the later EIS phase, when more information is available, should be reflected in the pre-hearing order that would be issued by the Council.

Jim Luce: Well hypothetically, if you do the pre-hearing order after the application is complete, and you identify the issues, and then your time frame expires, you know that your issues are in, and then anything that comes up subsequent to that would have to brought in by a motion to raise an issue after the fact, right?

Mike Dunning: Well, we could certainly do it that way, Mr. Chair, but I would note for the Council, that the earlier in the process parties are required to identify issues, the broader they will be. In other words, if we were to have to identify the issues today, I think Counsel for the Environment's position might be air quality might be an issue.

Jim Luce: And from my perspective that's notice pleading, and that's not useful.

Mike Dunning: Right, and so I think if we would wait until later in process, it would give people more time to look at the DEIS and develop, and perhaps narrow, issues.

Jim Luce: Right, and I guess what I would ask you to think about is whether you don't get all the information that you need in the Potential Site Study and in the application.

Mike Dunning: I think that because projects change over time, and to some extent, that's what the preliminary site study is for, I don't think that you would necessarily identify all the issues through the application or the preliminary study.

Jim Luce: I understand your position.

Allen Fiksdal: Yes, I will add that.

Acting Chair Carelli: Anything else on Wallula or Starbuck?

Dick Byers: Mr. Chair, I can't leave the oar in the water on this. Maybe this does tangle two processes, but it seems to me as though ultimately the EIS is part of the Record of Decision of the Council. And, if issues were to surface in the EIS process, perhaps that's foundation for good cause shown, but in any event, issues identified through the EIS process would be part of the Council's decision anyway.

Acting Chair Carelli: I would agree.

Dick Byers: So that might be something that would be useful to add as part of the draft.

Jim Luce: What concerns me, is that I don't want to see parties hanging back, and then bringing in issues later. We've seen some examples of that and maybe they were in good faith. The Potential Site Study, along with the full application, ought to give people who are interested in intervening enough of a factual basis to raise issues with some degree of particularity. So if something new comes in through the SEPA process later on that they weren't aware of before, good cause shown, no problem, open door. But we need to get these things out on the table, so that we can get a pre-hearing order out, and set an adjudicative schedule that will both protect the public interest and move the chains. I think it's just about that simple.

Heather Ballash: I'm sorry, but I have to say something because I have spent two years of my life talking about permitting processes and State Environmental Policy Act (SEPA). I think that there's something we need to keep in mind as we work on figuring out this process, and that is that SEPA and the permit process are not two separate processes. The whole point of regulatory reform was to reaffirm the idea that SEPA is designed to provide information about the decision you are making, which in EFSEC's case is the applications that come before us. To the extent that we can use SEPA and get it in the process, so that we're providing useful information for both the public and for ourselves to make a decision, that should be the goal. Knowing also that another goal is to not delay the process, we have to balance the two. But it's really important not to forget that SEPA is not this other separate process that is out there, it's an overlay for other laws and it shouldn't duplicate the authority you already have, it should be there only to fill in the gaps.

Jim Luce: I agree. One of the frustrations I have with SEPA and the ex parte constraints of an adjudicated hearing, is that through SEPA you're supposed to be able to talk to people and see what the public is thinking. That dialogue is constrained by the ex parte rules, seemingly to the point where we can't talk to people.

Heather Ballash: I would point out that local governments deal with this every day. When they are going through a permit process, it's quasi-judicial also, and they have managed to bring the processes together. In fact, counties and cities were required under the 1995 regulatory reform legislation to marry their permit and SEPA processes. Most of them are figuring out how to do it, we ought to be able to figure it out.

Jim Luce: I like that thinking because a key element of the SEPA process is providing information to and promoting discussions with the public.

ITEM 9: EVERETT DELTA PROJECTS I AND II

Petition for Declaratory Order	***Allen Fiksdal EFSEC Manager***

Allen Fiksdal: Thank you Mr. Chairs. On June 14, 2001, FPL Energy, Inc. (FPL Energy), filed a petition for a Declaratory Order with the Council regarding the applicability of site certification provisions under Chapter 80.50 RCW, for two separately owned power plants on adjoining lots in the Everett area. On three different occasions, staff sent out notices requesting comments on the process and the merits of the petition. In addition, FPL Energy has provided a great deal of information on the factual and legal aspects associated with these two projects (referred to as

Everett Delta I and II). Staff has prepared an order for your consideration today and Mr. Fallis is prepared to review the draft with you.

We received five comments in response to our notices. The first was from Mr. Darrell Thompson, from the Pilchuck Audubon Society, and he made two points. He stated that the two projects should be under EFSEC jurisdiction; and he felt that the projects should be located closer to existing pipelines.

The second letter was received from Curt Munitch, from Everett. Mr. Munitch also made the conclusionary statement that he thinks each project at 248 megawatts was an attempt to avoid EFSEC and to quote him, "common use of some facility is de facto evidence of collusion, and the Project should be under EFSEC".

The third letter from Mr. Howard Bargreen, of Bargreen Coffee Company in Everett, asked a series of questions which I'll briefly summarize. His questions concerned how the Endangered Species Act (ESA) affected the site; was anti-terrorist criteria used in the site decisions; how do new gas pipelines to these facilities fit into the new and impending gas line protection laws; what is the likely magnitude of any gas line explosion and how many civilians were at risk; what was the magnitude for a gas smell or gas exhaust odor and health effects; what were the advantages to the city of Everett regarding employment, amount of power and power rates; and, what other sites would be safer and healthier for the Everett citizens? He asked all these questions, but he didn't make any statement about the projects, or about EFSEC's possible action.

The fourth letter was from the Puget Sound Clean Air Authority. They made two points in their letter. The first pointed out that, "if operators exceed any permit time limitations, the permit will expire." Air permits are issued for a certain length of time, and if they lapse, licensees will have to go for a new permit. The second noted that the permits issued for the Everett Delta I and II projects list certain equipment and changes in equipment could trigger permit modifications.

The fifth letter was from the Department of Ecology's Northwest Regional Office in Bellevue. They stated that they have no opinion concerning whether the facilities are under EFSEC jurisdiction or not, but stated that it's possible that the combination of these two projects may qualify the projects for a Prevention of Significant Deterioration (PSD) air permit.

That summarizes the comments received from the public regarding the proposal. We also received comments from both project proponents, Florida Power and Light and Wasserstein Perella, stating that they think their facilities are not under EFSEC jurisdiction. Rusty, do you want to go over the order? Council members have seen it.

Rusty Fallis: I don't intend to go through the draft order in its entirety. I would offer a couple of comments as a follow-up to what Allen said. The record in this case consists of the materials that FPL Energy submitted and the comment letters that we've received, and the material that FPL Energy submitted to us, in my view, contradicts the assertions made in the letter that there was collusion between these developers, which is why the Finding of Fact that relates to that subject reads the way it does. The ultimate Conclusion of Law here, in effect is the one that the petitioner has asked for, and again, it's based explicitly and specifically on the Findings of Fact

that precede it, and again those Findings of Fact are based upon the record, which as I said, is in the materials that have been provided to the Council.

Allen Fiksdal: Staff would recommend that the Council issue this order and have the Chair sign it.

Rusty Fallis: Allen, do we know what number will be assigned to the order?
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Allen Fiksdal: I do not have that off the top of my head. We will have to look it up and assign the next number to this order. [762]

Acting Chair Carelli: Is there anyone from the public that wishes to speak on this matter?

Chuck Maduell: I am here on behalf of FPL Energy, the petitioner. My name is Chuck Maduell, with Williams, Kastner & Gibbs, and I am available to answer any questions.

Dick Byers: I make the following motion:
Motion: That the Council issue a Declaratory Order, number to be supplied by staff, in the matter of the petition of FPL Energy for the Declaratory Order.
Jim Luce: Second the motion.

Action: The motion passed unanimously.

ITEM 10: MERCER RANCH POWER PROJECT

Status Report	***Michelle Elling, EFSEC Staff***

Michelle Elling: Thank you. Since we issued the Potential Site Study for the Mercer Ranch Project, which was in the end of August, there have been a few changes to our contract with SAIC. While the contract technically ends with the final draft of the potential site study being submitted, SAIC has offered to introduce a whole new team to satisfy some of the issues that had arisen during that process. The new SAIC team would be established out of their Boise office, instead of out of Redmond (which is the team that developed the potential site study); with the lead being John Everingham.

On October 10, Ms. Makarow and myself accompanied Mr. Everingham, Jim Thornton, from Golder and Cogentrix's consultant, and Doug Jayne from Department of Ecology, on a site visit to come up to speed on the changes that Cogentrix has proposed for the Mercer Ranch Project. I would like to briefly review those changes for you.

First and foremost, they have moved where the project site is going to be located - it is now proposed to be in the middle of a cornfield, right in between the existing pipeline that's on site and the transmission lines. They are also proposing that the facility will be air-cooled. They are trying to get a water right from Mercer Ranch. They're now proposing to discharge to a lined pond, so it's not going to be that dissimilar from the Starbuck proposal. Cogentrix is proceeding

with developing their application, and Kurt Humphrey still believes that they could have an application for site certification ready by the first of December.

I want to note that Mr. Everingham from SAIC, actually went on the site tour at his company's expense, and at that time we had discussed the potential of Cogentrix funding SAIC to come up to speed. If you'll look at the letter that we received from Cogentrix, it reflects their understanding of what SAIC would be doing during this time to get ready for the anticipated submittal of the application. Mr. Humphrey has approved, not a phase two like we're doing with Shapiro for BP, where they are actually going to review drafts of the application for site certification, but that SAIC would coordinate with Golder and Cogentrix, so that when the application is submitted the new SAIC team would be fully up-to-speed. Cogentrix is authorizing a maximum of $10,000 for that effort. It's just a short term effort, two-months maximum, and they are only authorizing $5,000 initially; and are proposing that they would approve any additional work over that amount before the Council would authorize SAIC to proceed. They're asking that work under the task be pre-authorized by Cogentrix, but staff does not support that request. Staff does support their request for monthly progress and cost summaries.

You have before you a draft amendment (#3) to the SAIC contract for Mercer Ranch. At this time, we would like to request that the Council approve the amendment, pending finalization of the language with staff and SAIC.

Jim Luce: Let me understand. This is an additional increase to the current contract for a maximum of $10,000 to get the new team up-to-speed?

Michelle Elling: That's right.

Jim Luce: And Cogentrix is recommending that they'll approve up to the $10,000, subject to approval of the work.

Michelle Elling: Yes

Jim Luce: Okay, so hypothetically the $10,000 gets spent, everybody is working in good faith, and somehow the new team is determined not to be up-to-speed. Do we go back and look at it at that point in time?

Michelle: It actually was SAIC's responsibility to be up-to-speed without the money. They're our independent consultant.

Jim Luce: I understand that, so we just wait and see how well it goes.

Allen Fiksdal: The amount of money was essentially negotiated between Cogentrix and SAIC. SAIC felt that amount would be sufficient, and Cogentrix gave their okay.

Jim Luce: Then at this point, I would say it's okay. Dick.

Dick Byers: I see from the Cogentrix letter that this does not involve any activities associated with detailed reviews of drafts of the application.

Michelle Elling: That's right.

Dick Byers: Then this doesn't cover the kinds of activities that were identified in the amendment that we approved earlier in this meeting for PB Cherry Point?

Michelle Elling: No.

Dick Byers: It seems to me that there is logically some kind of overlap here, since the expectation is that the project application is imminent. I am just curious to know if staff has a view about whether any efficiencies might be gained by trying to address that issue at the same time as addressing this learning curve issue.

Allen Fiksdal: I think Cogentrix has decided not to submit draft portions prior to the submission of a final application. Once the application is filed, they don't want to have to wait for the new SAIC team to start learning about the project - they want the new team to be able to start reviewing the application at full speed.

Dick Byers: I understand, and it's up to the applicant as to whether they provide drafts prior to submittal of a final application.

Allen Fiksdal: Correct.

Dick Byers: A second question has to do with staff's view once again. Here we have a situation where it appears to me as though the Council's contractor has negotiated an arrangement with the potential applicant. Is it your view that that's the appropriate channel by which scopes of work should be decided? It would seem to me that since the contractor is working for the Council, then more appropriate channel would have been for that negotiation to have at least included staff.

Allen Fiksdal: I believe it did. When the Potential Site Study was completed, SAIC was told that the initial task of the contract was completed. They were advised that there was no money in the budget for them to do anything else, and any additional work would have to be approved through an amendment to the contract. Cogentrix approached staff about what could be done to get SAIC up-to-speed, and we said that for them to do anything and be reimbursed for it, the contract would need to be amended. Staff has advised SAIC not to do anything, because there is no money left in the contract. Yes, there was some negotiation, essentially to determine what Cogentrix is planning to do, and what it would cost for SAIC to do the limited scope that we've discussed today. That was discussed and there is agreement between Cogentrix and SAIC.

Dick Byers: And staff believes that the agreement that was reached is adequate to meet the needs of this task?

Allen Fiksdal: Yes. If it is limited to activities such as site visits and reading of materials, that are aimed at getting the new SAIC team going and working, while being very clear that they are not going to start reviewing anything in the application.

Dick Byers: And that last comment is relevant to the issue of whether or not Cogentrix itself has authority to pre-authorize activity under this contract.

Allen Fiksdal: They don't.

Dick Byers: But that was in their letter.

Allen Fiksdal: It is not in the contract.

Michelle Elling: Staff does not support that.

Allen Fiksdal: Staff is asking that the Council approve the amendment in concept, that is, can the chair be authorized to execute the amendment, once we've had a chance to review it more closely with our counsel.

Dick Byers: I make the following motion.
Motion: Move that the Council authorize the Chair to enter into an amendment to the SAIC contract for the purpose of bringing the contractor up-to-speed, in anticipation of submittal of an application for the Mercer Ranch Project.
Jenene Fenton: Second the motion.

Rusty Fallis: I would like to make one comment. On the point of whether monthly summaries of charges ought to be provided to Cogentrix, your statute says that you bill quarterly and I think that we ought to be careful about varying from that simply because an applicant has made such a request. It may have implications with other applicants and consultants. I understand that this applicant/contractor relationship is unique in some respects and has been challenging, but I think we need to be careful about doing anything that shifts responsibility to the applicant to call the shots in terms of the contract terms.

Allen Fiksdal: I would agree. However, in this case, if we receive monthly billings from our independent contractor, Cogentrix could request copies of the billings.

Rusty Fallis: Right, and I think it would be fine to give them those type of documents. I would recommend that you not include an obligation in the contract to provide such records.

Michelle: No, actually it's not. Because the contract is just with SAIC, it's not with Cogentrix, so there's no language in there for SAIC to give Cogentrix directly a copy of even their monthly report. That comes to me, and then I would be the one who takes care of that request, both the monthly summary of activities and the related costs.

Rusty Fallis: I understand, I am just warning against doing anything that an applicant could construe as a third party beneficiary contract that obligates the Council to do something that it really doesn't want to.

Jim Luce: So is there a motion and a second or a question?

Acting Chair Carelli: Question, all in favor.

Action: The motion passed unanimously.

ITEM 10: OTHER

BPA Regional Air Quality Study – Phase I report	***Irina Makarow, EFSEC Staff***

Irina Makarow: In your packets there is a summary I got off the Bonneville Power Administration (BPA) website regarding their Regional Air Quality Study, Phase I Results. In discussing the preparation of joint NEPA-SEPA EIS's for the Starbuck and Wallula projects, there have been some questions about how BPA's regional air quality analysis would be presented in the EIS documents. The first part of the handout summarizes what was presented at a public meeting in late August that explains what the key Phase I results are and what is going to happen in Phase II. The second section of that document is a sample of what would typically be provided for the Starbuck and Wallula Projects. It is the Phase II analysis that BPA has produced for the Trans-Alta's Big Hanaford Project near Centralia. I am assuming that BPA would produce a similar type document for the Starbuck and Wallula projects. If you have any questions, just give me a call.

Sumas Energy – Hearings	***Irina Makarow, EFSEC Staff***

Irina Makarow: We're going to send out an e-mail to finalize the travel arrangements for the Sumas hearings, so be ready to respond with your travel plans.

Allen Fiksdal: The plane is leaving on Sunday afternoon, and there is also a van leaving Sunday afternoon. The hearings are scheduled to begin at 9:00 a.m. on Monday morning, November 29. Discussion followed on the amount of luggage that can be carried on the State Patrol plane; making arrangements with staff to have hearing materials transported in the van; and the difficulty in finding a location for the second week of hearings. Staff explained that they had been unable to locate a facility in the Olympia area, but had made reservations at a hotel conference center in Fife. Staff was asked to check with the Utilities and Transportation Commission about the availability of their main hearing room for the week of November 13th through 16th.

ITEM 11: ADJOURN

Acting Chair Carelli: We are adjourned.

The meeting was adjourned at 3:30 p.m.